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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/670,983	09/24/2003	David B. Hamilton	SAN452	8110
25235	7590	03/23/2005	EXAMINER	
HOGAN & HARTSON LLP ONE TABOR CENTER, SUITE 1500 1200 SEVENTEENTH ST DENVER, CO 80202			BARBEE, MANUEL L	
			ART UNIT	PAPER NUMBER
			2857	

DATE MAILED: 03/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/670,983

Applicant(s)

HAMILTON ET AL.

Examiner

Manuel L. Barbee

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 19 and 20 is/are allowed.
- 6) ☒ Claim(s) 1, 2 and 9-13 is/are rejected.
- 7) ☒ Claim(s) 3-8 and 14-18 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 9/24/03, 2/24/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Lewis et al. (US Patent No. 5,706,436).

With regard to accessing a set of performance metric values and generating a trace of data points based on the metric values, as shown in claim 1, Lewis et al. teach monitoring network parameters and generating an X-Y plot (col. 1, lines 28-38; Fig 2). With regard to building a histogram based on a selected histogram range of the trace and concurrently displaying the histogram, as shown in claim 1, Lewis et al. teach concurrently displaying a histogram based on the trace data (Fig. 2).

With regard to wherein the performance values are discovered, as shown in claim 2, Lewis et al. teach measuring network parameters (col. 1, lines 28-38).

3. Claims 9 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Ennis, Jr. et al. (US Patent NO. 5,867,483).

With regard to determining performance metrics for a component of a data network and storing the metrics in memory for a period of time and building a histogram and storing the histogram in memory, as shown in claim 9, Ennis, Jr. et al. teaches measuring utilization and storing count in a percentage range for utilization for a period

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of time (col. 9, line 36 - col. 11, line 12; col. 13, line 61 - col. 14, line 33). With regard to storing additional histograms for a second period of time and building a second level histogram from the stored histograms, as shown in claim 11, Ennis, Jr. et al. teach aggregating data from short term databases into a long term database (col. 13, line 61 - col. 14, line 33).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ennis, Jr. et al. in view of Moriarty (US Patent Application Publication 2002/0161755).

Ennis, Jr. et al. teach all the limitations of claim 9 upon which claim 10 depends. Ennis, Jr. et al. do not teach deleting stored performance metrics from memory, as shown in claim 10. Moriarty teaches deleting performance metrics after a period of time (par. 19). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the throughput measurement, as taught by Ennis, Jr. et al., to include deleting metrics after a period of time, as taught by Moriarty, because then memory space would have been available for saving more current data.

6. Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lewis et al. in view of Ennis, Jr. et al.

With regard to a first graphical representation plotting a trace and a second graphical representation illustrating a histogram, as shown in claim 12, Lewis et al. teach displaying a trace and a histogram (Fig. 2). Lewis et al. do not teach a histogram range selector, as shown in claim 12, or that the selector is adjustable, as shown in claim 13. Ennis et al. teach a selector for allowing the user to select a range of data on a first graph for generating a pie chart (col. 15, lines 7-20). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the network traffic performance method, as taught by Lewis et al., to include a selector, as taught by Ennis et al, because then the user would have been able to take a closer look at a specific section of measured data.

***Allowable Subject Matter***

7. Claims 19 and 20 are allowed.
8. Claims 3-8 and 14-18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
9. The following is a statement of reasons for the indication of allowable subject matter: None of the prior art teaches a method for reporting data network monitoring information that includes, accessing a set of performance metric values for a network component, generating a trace comprising graph data points based on the metric values, building a histogram based on a selected histogram range of the trace and generating a user interface that displays the trace and the histogram wherein each

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graph data point in the trace corresponds to a histogram and the trace is generated by determining and plotting an average value of each of the graph data point histograms .

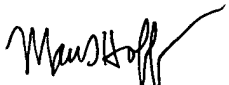
**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Manuel L. Barbee whose telephone number is 571-272-2212. The examiner can normally be reached on Monday-Friday from 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marc S. Hoff can be reached on 571-272-2216. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

mlb  
March 14, 2005

  
MARC S. HOFF  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2800